

**SCHEDULE 1**

**FORM PRE-NEGOTIATION AGREEMENT**

[Date]

[Borrower's Name & Address]

Dear: \_\_\_\_\_

When executed by both parties below, this letter constitutes an agreement between \_\_\_\_\_ ("Borrower") and \_\_\_\_\_ ("Lender").

1. **Negotiations.** The parties have commenced or are about to commence negotiations concerning certain indebtedness of Borrower to Lender and obligations related thereto (collectively, the "Obligations") described in that certain Loan Agreement dated \_\_\_\_\_, 20\_\_\_\_, and otherwise evidenced and secured by various loan documents described therein (collectively, the "Loan Documents"). Without liability for such discussions, the parties each plan to discuss various courses of action that might be in their mutual interests. Either party, in its sole and absolute discretion, may terminate these discussions at any time and for any reason; and upon such termination of discussions, the respective obligations to one another shall be only as set forth in the existing Loan Documents. The discussions hereunder, and any correspondence, proposals, offers, or documents prepared in connection therewith (other than this letter and any final documents fully executed and delivered in accordance with paragraph 2 below), may not be introduced in any legal proceeding involving Lender and Borrower, such matters being privileged in the same manner as settlement offers in litigation.

2. **Only Written Agreements and Amendments.** Please be advised that any discussions that may have occurred or may occur in the future among Borrower, Guarantor, and Lender and/or their representatives regarding the Loan Documents evidence nothing more than the continuing good faith attempts to work out any defaults and/or address Borrower's requests to modify the Obligations in a manner reasonably acceptable to all parties. The contemplated discussions may be lengthy and complex and Borrower may not rely upon any such discussions in any manner. Any and all discussions regarding Loan Documents are undertaken with a view toward amicable resolution, compromise and settlement and will not be discoverable or admissible as evidence on any issue before any court or administrative body. While the parties may reach preliminary agreement on one or more issues that are part of the problem they are trying to resolve, the parties have agreed that neither of them shall be bound by any agreement on individual issues until (a) agreement is reached on all issues, and (b) such agreement has been reduced to a written agreement and signed by each of the parties. It is acknowledged by the parties that, to facilitate negotiations, proposals may be stated in writing, but these writings shall not be binding until both (a) and (b) have taken place. Furthermore, in order to avoid any confusion or misunderstanding, each of the parties also agrees that this agreement may only be amended in a writing signed by both parties which expressly states an intent to amend this agreement.

3. **Loan Documents Still in Force.** The present principal balance of the Loan is \$ \_\_\_\_\_ with interest accruing at the rate set forth in the Loan Documents. Notwithstanding any other provisions of this agreement, or any claims of the parties to the

contrary, the Loan Documents are in full force and effect (subject to the defaults, if any, listed in paragraph 8 of this agreement and any remedies that may have been exercised by Lender), and shall remain in full force and effect unless and until a written document is signed that complies with the provisions of paragraph 2 of this agreement.

4. **No Waivers/Strict Compliance.** No negotiations or other action undertaken pursuant to this agreement shall constitute a waiver of any party's rights under the Loan Documents, except to the extent specifically stated in a written agreement complying with the provisions of paragraph 2 hereof. Notwithstanding any previous action or inaction by Lender to the contrary, Borrower is hereby notified that Lender demands strict compliance with the terms and conditions of the Loan Documents. Borrower acknowledges that Lender may commence or, if previously commenced may continue to pursue, its remedies (including, without limitation, acceleration and foreclosure) for any default now existing or which occurs in the future under the Loan Documents, notwithstanding ongoing discussions between the parties.

5. **Authorized Representatives.** By execution hereof, Borrower acknowledges that the addressee hereof shall be authorized to negotiate on its behalf. Borrower is advised that the representatives of Lender negotiating with Borrower will in most instances not have final authority to bind Lender and will need to seek formal approval prior to entering into a binding agreement.

6. **Attorneys' Fees.** Borrower hereby further acknowledges and agrees that: (i) all attorneys' fees and expenses incurred by Lender in connection with discussions hereunder (whether or not such discussions result in execution of a binding agreement), together with any such fees and expenses incurred in connection with a dispute hereunder or any legal proceedings whatsoever to determine the rights of the parties hereunder or under the Loan Documents, are incurred pursuant to the attorneys' fees provisions of the Loan Documents; and (ii) all such fees and expenses therefore constitute a portion of the indebtedness secured by the Loan Documents subject to repayment in accordance with the Loan Documents.

7. **Tolling of Statutes of Limitations.** The parties agree that the running of all statutes of limitations or doctrine of laches applicable to any claims or causes of action, including without limitation, all avoidance actions under Chapter 5 of Title 11 of the United States Code, or applicable state fraudulent conveyance statutes that might be brought by or on behalf of Lender in a proceeding under said Title 11 or under applicable law, are tolled and suspended during the period commencing as of the transmission date of this letter agreement and ending thirty (30) days following receipt of notice terminating the negotiations described in this letter agreement.

8. **Miscellaneous.** This agreement constitutes the entire agreement of the parties concerning its subject matter and supersedes any prior or contemporaneous representations or agreements (other than the Loan Documents) concerning the Obligations or the subject matter of this agreement. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns, and shall be governed by the law of the State in which the Loan Documents are recorded, without giving effect to principles of conflicts of laws. Paragraph headings used herein are for convenience only and shall not be used to interpret any term hereof. This agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one agreement. Each party executing this agreement represents that such party has the full authority and legal power to do so.

[SELECT ONE]

8. **Loan Not in Default.** Borrower and Lender are not currently aware of any default under the Loan Documents, but Lender reserves the right to declare any default which subsequently occurs or otherwise comes to its attention notwithstanding any ongoing discussions pursuant to this agreement.

[OR]

8. **Loan in Default.** Borrower acknowledges that the Obligations are in default as follows: \_\_\_\_\_. The foregoing is not intended to be an exhaustive list of existing defaults.

If the foregoing accurately summarizes the terms of our binding agreement, please sign this letter in the space provided below and return one copy to \_\_\_\_\_ at your earliest convenience.

Sincerely yours,

[LENDER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CONSENTED AND AGREED TO ON \_\_\_\_\_, 20\_\_\_\_.

[BORROWER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_